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term does not release the lessee from liability for rent, as he is not deprived of the beneficial use of the premises. *Kerley* v. *Mayer,* (Com. Pl.) 10 Misc. Rep. 718, 31 N. Y. Supp. 818. The cases above cited undoubtedly indicate the weight of authority, with which the principal case is in accord, but there are found in a South Carolina case, dicta to the effect that if the tenant is deprived of the beneficial use of the premises according to the terms of the lease, that is the destruction of the subject matter and upon surrender or an offer of surrender of all benefit therein the tenant has a good defense against the collection of the rent. *Coogan* v. *Parker,* 2 S. C. (2 Rich.) 255, 16 Am. Rep. 659.

LIBEL AND SLANDER—DEFAMING A PUBLIC OFFICER.—An item appeared in the New York Tribune which stated that the plaintiff, a clerk in the city magistrate's court, and his associates failed to appear at certain sessions of the court as was their duty. It was an imputation of shirking a public duty on the part of an officer. *Held,* that such imputation is libelous per se. *Church* v. *New York Tribune Assn.* (1909), 118 N. Y. Supp. 626.

Any language, written or spoken, imputing a dereliction of duty to an officer of the public or an employee is actionable per se. *Prussing* v. *Jackson,* 85 Ill. App. 324; *Hay* v. *Reid,* 85 Mich. 296, 48 N. W. 507; *Bourreseau* v. *Detroit Evening Journal Co.,* 63 Mich. 425, 30 N. W. 376, 6 Am. St. Rep. 320; *O'Leary* v. *New York News Pub. Co.,* 51 App. Div. 2, 64 N. Y. Supp. 327. To be actionable the charge must not only tend to injure the plaintiff in his office but must touch him in his official character by imputing the want of necessary characteristics. *Sillars* v. *Collier,* 151 Mass. 50, 23 N. E. 723, 6 L. R. A. 680; *Kinney* v. *Nash,* 3 N. Y. 177. This applies to defamatory words concerning county auditor, *Prosser* v. *Callis,* 117 Ind. 105, 19 N. E. 735; election inspector, *Ellsworth* v. *Hayes,* 71 Wis. 427, 37 N. W. 249; notary public, *Henderson* v. *Commercial Advertiser Ass'n,* 111 N. Y. 685, 19 N. E. 286; aff. 46 Hun 504; sheriffs, *Heller* v. *Duff,* 62 N. J. L. 101; policemen, *O'Brien* v. *Times Pub. Co.,* 21 R. I. 256, 43 Atl. 101; jurymen, *Byers* v. *Martin,* 2 Colo. 605, 25 Am. Rep. 755, and similar officers.

MASTER AND SERVANT—ASSAULT BY FELLOW SERVANT—LIABILITY OF MASTER. Defendant corporation employed plaintiff to act as engineer in its milling plant. For a long time previous to the employment of plaintiff it had been the custom among the old employes of defendant to initiate every new man employed to work with them. Only those strong enough to successfully resist evaded the initiation, and among those who had been initiated were the president and manager of defendant corporation. A short time after plaintiff had assumed his duties a number of the old employes seized him and proceeded to conduct the initiation by holding the body over a barrel and applying a paddle as had been the custom. Plaintiff resisted and in the struggle suffered the injuries complained of. *Held,* that plaintiff could recover damages from defendant for the injuries suffered. *Medlin Milling Co.* v *Boutwell* (1909),—Tex. Civ. App.—, 122 S. W. 442.

The opinion states that since the defendant had permitted this custom of initiating new men to continue for a number of years and had made no

effort to stop it, the assault on plaintiff must be considered as being authorized by defendant. It is clearly the weight of modern authority that a corporation is liable for assaults committed by its officers, servants and agents. In 1 COOK, CORPORATIONS, Ed. 6, § 15b, the rule is stated: "A corporation may be held liable * * * * * * for assault and battery committed by its officers, agents or servants in executing the rules and regulations or orders of the corporation." It is also clear "that a corporation is not liable for the acts of its officers and agents not within their express or implied authority." 7 AM. & ENG. ENC. 825. It would seem that courts will be slow to accept the rule of the present case, that the failure to exert efforts toward stopping or failure to prevent employes from playing pranks outside their employment, impliedly authorizes them to do the acts, and makes the acts those of the corporation. Though the present case carries the doctrine to facts in an extreme case, there are cases applying the principle here involved. In *Avery* v. *Bully,* 1 (Root) Conn. 275, the court held "That the commanding officers of a company of militia were liable for assaults committed by the soldiers under their command, which they knew of and did nothing to prevent, or to detect and punish." In *Harper* v. *Ind. Etc. R. Co.* 47 Mo. 567 the court held that "Where the officers of a railroad company knew that it is the custom for engineers to permit firemen to handle their engines, and do nothing to prevent this, the company is liable for the damage caused by the incompetence of the fireman while temporarily acting in the capacity of an engineer."

MUNICIPAL CORPORATIONS—PAVING CONTRACTS—CONTRACTOR NOT A WARRANTOR OF PLAN AND SPECIFICATIONS PREPARED BY MUNICIPALITY.—Plaintiff entered into a contract with defendant city, by the terms of which it was to furnish labor and material to construct an asphalt pavement in one of defendant's streets and to keep it in good repair for two years. The contract provided that the work should be done under the superintendence and in full compliance with defendant's plan and specifications, and that a specified percentage of the amount due under the contract was to be retained for two years by defendant's treasurer to pay the expense of making repairs. Plaintiff executed the work in accordance with the contract but defendant's plan was defective and although fully complied with was insufficient to keep the pavement in repair. Plaintiff sued to recover the amount due under the contract. *Held,* that the plaintiff could recover its contract price without repairing the pavement for two years, after its acceptance by the city. *Cameron-Hawn Realty Co.* v. *City of Albany* (1909), 119 N. Y. Supp. 128.

The court based its decision on *MacKnight Flintic Stone Company* v. *The Mayor,* 160 N. Y. 72, 54 N. E. 661, which is precisely in point and rests upon the principle that, "If the thing is itself specifically selected and ordered, there the purchaser takes upon himself the risk of its effecting its purpose." (1 PARSONS, CONTRACTS, 587.) One of the judges dissented from the opinion of the court in that case and in the principal case two of the judges dissented, but the cases are sound in principle and the following cases are precisely in point and directly in accord. *Filbert et al.* v. *Philadelphia,* 181 Pa. St. 530, 545; *Mac Ritchie* v. *City of Lake View,* 30 Ill. App 393, 398; *Bancroft* v. *San*